

12 May 1975

George--

About a month ago you asked me to update the legislation package we put together for Senator Stennis so that we could send one to the White House. Since that time a couple of other subject areas have developed and I would like to include these in the package. Drafts on both of these sections are attached along with the original paper. In the note to me on the original paper you said we should prepare the package in draft form since the surveillance section hadn't fully been ironed out. I believe it has been now, so with your approval we'll put this package in final and include the two new sections.

Don

FREEDOM OF INFORMATION AMENDMENTS

1. Senator Kennedy authored and held hearings in April on S. 1210, a bill to amend the Freedom of Information Act. Basically, the bill would prohibit an agency from taking any adverse personnel action against an employee who discloses any information to any person, as long as the agency would be required to make the information available to the public under the current provisions of the Freedom of Information Act (5 U.S.C. 552(a)). The bill does not make clear whether an employee must seek authorization from designated agency Freedom of Information Act officials before releasing a document, or whether he can release it predicated on his own belief that the document is not exempt from release. If the bill were interpreted to allow employees to reach their own decision, agency attempts to deal with the Freedom of Information Act in a methodical, organized manner would be destroyed.

2. This interpretation would also subject employees to substantial risks. If the employee releases materials which should have been withheld under FOIA, no protection is afforded employees. If the release amounts to a security violation, the consequences of the release could well be quite serious for the U. S. Government, and for the employee.

3. If it is the intent of the bill to require an employee to obtain official screening and approval before releasing a document, such fact needs to be clearly stated in the bill. This would alleviate the major potential problem with the bill, but others would remain. These include:

a. Section 102(c) of the National Security Act of 1947 (50 U.S.C. 403) grants the Director of Central Intelligence the power to terminate the employment of any CIA employee when, in his complete discretion, such termination would be necessary or advisable in the interests of

the United States. The restriction in S. 1210 on adverse personnel actions dilutes the statutory authority of the DCI.

b. Section (f)(1)(B) establishes the right of employees to make any information whatsoever available to Members of Congress, even information protected from public disclosure under exceptions to the Freedom of Information Act. This section would nullify attempts to fulfill responsibilities of agency reporting to Congress through regular channels. It would also contradict congressionally-established procedures of restricting access to sensitive CIA information to CIA oversight subcommittees. Finally, it would create a major and unwarranted exception to the charge upon the Director of Central Intelligence to protect Intelligence Sources and Methods from unauthorized disclosure (50 U.S.C. 403).

c. The recent Freedom of Information Act amendments (P. L. 93-502) have dramatically increased the workload of federal agencies in dealing with these requests. CIA, for example, has found it necessary to assign over fifty of its employees to work full-time handling FOIA requests, and the FBI 135. This amendment would further tax agency resources.